

## California Supreme Court boosts patient rights

Contributed by Chris Conrad  
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The California State Supreme Court handed a four way victory to medical marijuana patients Jan. 21 with its *People v Kelly* decision. It affirmed the state and county guidelines as a safe harbor from arrest for patients in the state ID card program. It struck down those quantities as limits on a patient's legal defense. It affirmed the constitutionality of the SB 420's patient ID system. Finally, it affirmed the constitutionality of medical marijuana collectives and the right of patients to form collectives in all counties throughout the state.

The Court held that Senate Bill 420 struck down the nominal quantity limits of 8 ounces and six or 12 plants in Health and Safety Code 11362.77 to the extent that they burden a patients right to argue for any reasonable quantity in court pursuant to its earlier *People v Mower* decision. Moreover, the Court held that since Prop 215 did not protect patients from being arrested, SB 420 's state ID card and state and local guidelines or a doctor's authorization shall continue to protect patients from arrest. After arrest, a prosecutor would have to prove that the quantity was not reasonable or the intent was for non-medical use.

" [T]he MMP's identification card system is a discrete set of laws designed to confer distinct protections under California law that the CUA does not provide[,] without limiting the protections the CUA does provide. For example, unlike the CUA, which did not immunize medical marijuana users from arrest but instead provided a limited "immunity defense to prosecution under state law for cultivation or possession of marijuana [citation], the MMP's identification card system is designed to protect against unnecessary arrest&hellip;."

The court also appears to have included patients who do not register in the state program as being immune from arrest within the appropriate threshold amounts.

"The MMP's safe harbor provision, subdivision (f) of section 11362.77, authorizes possession of certain amounts of medical marijuana. It provides that a "qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article [that is, as provided in subds. (a)-(c) of § 11362.77];" By its terms, this safe harbor provision, which is not directly implicated on the facts of this case, would apply not only to those who hold MMP identification cards, but also to qualified patients or their primary caregivers -- those persons who are entitled to the protections of the CUA but who do not obtain a program identification card that may provide protection against arrest."

Following are more excerpts from the Supreme Court's ruling S164830.

The "amount established pursuant to this article" is addressed in section 11362.77, the statute at issue in this case. That section does two things: (1) it establishes quantity limitations, and (2) it sets forth a "safe harbor" by authorizing possession of specific amounts of medical marijuana within those specific limits. (p.6).

[S]ection 11362.77 is unconstitutional insofar as it burdens a defense, provided by the CUA, to charges of possessing or

cultivating marijuana. But, as explained in part V. below, we disagree with the Court of Appeal's second conclusion &mdash; that section 11362.77 is wholly invalid, and that it &ldquo;must be severed from the MMP.&rdquo;&hellip; (p.18)

[S]ection 11362.77's quantity limitations conflict with &mdash; and thereby substantially restrict &mdash; the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. &hellip; (p.45)

Kelly footnote: *People v. Windus* (2008) 165 Cal.App.4th 634, 643 [although the CUA requires that &ldquo;a defendant must have obtained a recommendation to use medical marijuana prior to his or her arrest[,] . . . that recommendation need not specify an approved dosage or amount of marijuana that may be possessed. A doctor's opinion that the amount in the defendant's possession meets his or her personal medical needs may be proffered at trial&rdquo;.]&hellip;. (p.47FN)

[T]he MMP's identification card system is a discrete set of laws designed to confer distinct protections under California law that the CUA does not provide[,] without limiting the protections the CUA does provide. For example, unlike the CUA, which did not immunize medical marijuana users from arrest but instead provided a limited &ldquo;immunity defense to prosecution under state law for cultivation or possession of marijuana [citation], the MMP's identification card system is designed to protect against unnecessary arrest&hellip;. (p.50)

The court in *San Diego NORML* concluded: &ldquo;Here, although the legislation that enacted the MMP added statutes regarding California's treatment of those who use medical marijuana or who aid such users, it did not add statutes or standards to the CUA. Instead, the MMP's identification card is a part of a separate legislative scheme providing separate protections for persons engaged in the medical marijuana programs, and the MMP carefully declared that the protections provided by the CUA were preserved without the necessity of complying with the identification card provisions. (§ 11362.71(f).) [In this sense] [t]he MMP, in effect, amended provisions of the Health and Safety Code regarding regulation of drugs adopted by the Legislature, not provisions of the CUA. Because the MMP's identification card program has no impact on the protections provided by the CUA, we reject Counties' claim that those provisions are invalidated by article II, section 10, subdivision (c) of the California Constitution.&rdquo; (*San Diego NORML*, supra, 165 Cal.App.4th 798, 831; accord, *People v. Hohanadel* (2009) 176 Cal.App.4th 997, 1101-1014 [holding that § 11362.775 of the MMP, concerning collectives or cooperatives, does not constitute an unconstitutional amendment of the CUA].) &hellip;. (p.51)

Whether or not a person entitled to register under the MMP elects to do so, that individual, so long as he or she meets the definition of a patient or primary caregiver under the CUA, retains all the rights afforded by the CUA. Thus, such a person may assert, as a defense in court, that he or she possessed or cultivated an amount of marijuana reasonably related to meet his or her current medical needs &hellip; To the extent section 11362.77 (together with its quantitative limitations) impermissibly amends the CUA by burdening a defense that would be available pursuant to that initiative statute, section 11362.77 is invalid under California Constitution article II, section 10(c). Nevertheless, it would be inappropriate to sever section 11362.77 from the MMP and hence void that provision in its entirety. &hellip;. (p.53)